IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

No. WP 773 of 2003 (M/S). decided on 22-09-2003

With

WP (M/S) 835/03, WP (M/S) 836/03, WP (M/S) 837/03,
Munnawar Vs. Addl. Distt. Judge, Haridwar & another

A.F.R. (Approved for reporting)

~~**Not approved for reporting**~~

Date

22/9/2003 **Initials of Judge**

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NANITAL

Writ Petition No. 773 of 2003 (MS)

Munnawar ….Petitioner

Versus

Addl. District Judge, Haridwar & another …..Respondents

Writ Petition No. 835 of 2003 (MS)

Aslam ….petitioner

Versus

Addl. District Judge, Haridwar & another …..Respondents

Writ Petition No. 836 of 2003 (MS)

Nissar . ….petitioner

Versus

Addl. District Judge, Haridwar & another …..Respondents

Writ Petition No. 837 of 2003 (MS)

Varun Kumar ……Petitioner

Versus

Addl. District Judge, Haridwar & another …..Respondents

Writ Petition No. 786 of 2003 (MS)

Bhoora ……Petitioner

Versus

Addl. District Judge, Haridwar & another …..Respondents

Sri A.K. Sharma, Advocate for the petitioners.
Sri Alok Singh, Advocate and Standing Counsel for the respondents.

Hon'ble Rajesh Tandon J:

The present writ petitions have been filed against the judgment and order passed by the Additional District Judge, Haridwar, by which revision preferred by the respondents have been allowed and the order passed by Judge, Small Cause Court has been set aside.

Brief facts giving rise to the present writ petitions are that landlord served separate notices on the tenant petitioners to vacate the rented accommodation and to pay arrears of rent but despite of service of notices they did not vacate the premises in their respective occupation. Hence the landlord has filed suits no. 4/95, 5/95/ 6/95 7/95 and 9/95 in the Court of Judge, Small Cause Court, Hardwar, praying for eviction of the tenants and for arrears of rent for certain period.

Defendant tenants in all the suits filed their respective written statements. It was stated that there was no relationship of landlord and tenant between the parties and as such the suit is not cognisable before the Judge Small Cause Court. By way of amendment a plea was inserted stating that the suit is liable to be returned to the Civil Court under section 23 of the Provincial Small Cause Courts Act.

The Landlord has stated on oath that petitioner tenant has paid rent up till March 1990 and thereafter no rent was paid and as such suit for eviction was filed. Defendant was also examined on oath. The

tenants have stated that they were paying rent to Vakil Ahmad although their landlord is Sarafat Ali. Further the tenants have stated that there is no relationship between them and Sarafat Ali as landlord and tenants.

The Judge Small Cause Court has framed as many as seven points for determination. Plot No.1 was filed to the effect as to whether the plaintiff is the owner of the premises is dispute and point no.4 was the effect as to whether Sarafat Ali is the owner of the premises. The learned Judge, S.C.C. has decided the whole suit on the basis of issues no.1 as well as issue no.4. On 29.7.2000, the Judge, S.C.C. has passed the order returning the plaint to the regular civil court as in his opinion the question of title is involved in the suit. Aggrieved by the aforesaid order the landlord Abdul Gafar has filed a revision under section 25 of Provincial Small Cause Courts. The revision was allowed on 19.7.2003 and the case was remanded back to the Judge, Small Cause Court for deciding the case afresh on merits. Hence the present writ petitions have been filed challenging the orders passed on 19.7.2003.

Heard Sri A. K. Sharma counsel for the petitioner and Sri Alok Singh, counsel for the landlord.

The S.C.C. Suit No. 5 of 1995, 6 of 1995, 4 of 1995, 7 of 1995 and 9 of 1995 have been filed for the eviction of the petitioners. The petitioners have denied in their written statements stating therein that there is no relationship of landlord and tenant between the plaintiff and the defendant. However, no rent deed was filed in order to show that Sarafat Ali is the owner of the land in dispute and the plaintiff is not the owner of the premises.

Section 23 of Provincial Small Cause Courts Act provides as under:

(1) *Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a court cannot finally determine, the court may at any stage of the proceeding return the plaint to be presented to a court having jurisdiction to determine the title.*

The legislature has used the word 'May' intentionally so that the defendant may not be permitted to prolong the case, In the present case defendant has stated that some one else is the titleholder and no title was claimed on him and it is not a case where the provision of section 23 of Provisional Small Cause Courts Act are attracted.

It is true that the question of title cannot finally be determined by the Judge Small Cause Court but he has power to decide the case incidentally, the jurisdiction of the Judge Small Cause Courts cannot be ousted on the plain denial of the title of the plaintiff. The revisional Court, therefore, has rightly come to the conclusion that the petitioner is a tenant of the premises as he has not claimed himself to be the owner of the property.

As observed by the revisional court that admittedly the petitioners are tenants and as such it is not expected from a tenant to deny the title. It is established law that no tenant of immovable property shall during the continuance of the tenancy shall be permitted to deny the ownership of the property.

In the case of **Joginder Singh and another vs. Smt. Joginder and others, JT 1996 (1) SC 467,** The Apex Court has relied upon the provisions of Section 116 of Evidence Act and has held that no tenant of immovable property can be allowed to deny the title of the landlord. The observations are quoted below:

"This is a settled view that having regard to the provisions of section 116 of the Evidence Act no tenant of immovable property or person claiming through such tenant shall, during the continuance of the tenancy, be permitted to deny the title of the owner of such property. In this connection it would be relevant to make a reference to the decision of this Court in Veerraju vs. Venkanna (1966 (1) SCR 831 = AIR 1966 SC 629) wherein this Court, with reference to the decision of Privy Council took the view as under:

> *"A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord."*

In view of the aforesaid facts it is fully established that the relevant statements of the plaintiff which forms part of the writ petition in order to come to the conclusion as to whether the petitioners were let out the accommodation by the plaintiff landlord. The statements are sufficient to come to the conclusion that the Judge, Small Causes Court has full jurisdiction to decide the case. Various statements in various suits are referred to as under:

The plaintiff has deposed in Suit NO. 7 of 1995:

विवादित दुकान जनवरी 89 में बनकर तैयार हो गई थी पर दिसम्बर 88 में बनानी शुरू की थी यह मैने बनाई थी। बनाने के बाद मैने दुकान नौशाद को 200/महीना किराये पर दी थी। नौशाद ने विवादित दुकान का रिया मुझे मार्च 90 तक का दिया है इसके बाद का किराया मै प्रतिवादी न0 1 से मॉगता रहा लेकिन नौसाद ने किराया नहीं दिया व टाल मटौल करता रहा कि मुकदमा दायर करने से पहले प्रतिवादी सं 1 वह 2 को नोटिस भेजा था नोटिस भेजने के समय इस पर अप्रैल 90 से मई 95 तक कुल मु012400/ किराया बकाया था नौशाद ने प्रि0 नं0 2 मनव्वर को विवादित दुकान में किशमी किरायेदार सन 1994 के माह जनवरी व फरवरी में रख लिया था

In Suit No. 6 of 1995 the plaintiff states as under:

विवादित दुकान जनवरी 1989 में बनकर तैयार हो गयी थी। दिसम्बर 88 में मैने बनानी शुरु की थी। विवादित सम्पत्ति में निसार अहमद नवम्बर 95 से फिर कहा सन 1990 से किरायेदार है दुकान जनवरी में बनी थी नबम्बर में उसी साल किराये पर दे दी थी। किराये पर जब दी थी तो 31 इक्टूवर को दो महदना का रिया एडवांस लेकर रसदी दे दी थी। रसीदें कागज सं0 19 सी से 22 सी सील्ड लिफाफे में रखी है सील्ड लिफाफा न्यायालय के समक्ष खोला गया रसीद देकर उसका मुसम्मा में रखता था मुसन्न पर निसार रसीद लेने के व में देने के हस्ताक्षर करता था। शुरु में किराया देने के बाद इसन तीन महीने का किराया फरवरी में व फिर फरवरी में ही एक महीने का फिर मार्च में एक महीने का किराया दिया गवाह ने कागज सं0 19 सी0 22सी0 देख कर कहा कि यही वे रसीदें है। मुसन्ने मेरे हाथ के धरें हैं गवाह ने उन पर अपने दस्तखत पहचाने । इस पर उसी निसार के हस्ताक्षर हैं जो हनमें प्रतिवादी है निसार ने इस मुसम्मे पर मेरं सामने हस्ताक्षर किये थे इस पर ई0एक्स0.4 डाले गये। प्रतिवादी की ओर अप्रैल 90 से मई 95 तक का किराया वाजिब का प्रतिवादी ने मुझे मॉगने पर भी नही दिया

In suit No. 4 of 1995 the plaintiff states as under:

विवादित दुकान माह नवम्बर 88 में मैनें बनायी थी। इसमें मैने वरुण कुमार प्रतिवादी नं0 1 को माह जनवरी 89 में 200/ महीना किरये पर दी थी। वरुण कुमार ने मुझे विवादित सम्मपत्ति का माह मार्च 1990 तक का किरया दस्ती दिया हआ है इसकी ओर अप्रैल 90 से मई 95 तक का रियचा 12400/ रु0 बकरया था। इस समाय विवादित सम्पत्ति पर ताहिर पुत्र रियाजुदीन शमकी किरायेदार है जिसे वरुण प्रविादी नं0 1 ने मेरी बिना इजाजत के नाजायज उठाने के गर्ज से जनवरी 95 से दिया है। मैने वरुण से बाजिव शुदा किराया मॉगा तथा ताहिर ने दुकान खाली करने को कहा। यह शिमकी किराये की बात वरुण ने बताया कि मुझे दुकान की जरुरत नही है इसलिए तैने ताहिर को शमकी रियेदार दे रखी है विवादित सम्पत्ति 1987 में नही बनी थी। बल्कि नवम्बर 88 में मैने ही बनायी थी

In suit No.5 the plaintiffs states as under:

विवादित दुकान नवम्बर 88 की बनी है जो कि मैने बनायी थी। यह दुकान मैने ही इसलम प्रतिवादी को जनवरी 89 को किराये पर 200/ रु0 प्रतिमाह पर दी थी इसकी किरायेदारी अंग्रेजी माह की पहली तारीख से शुरु होती है। प्रतिवादी ने मुझे मार्च 90 तक का किराया दिया है प्रविादीकी ओर अप्रैल 90 से मार्च 95 तक का किराया वाजिब है। प्रतिवादी ने फिर कहा मई 95 तक का वाजिब है कुल 12400/ वाजिब है मैने यह किराया पहले भी मॉगा था यह किराया उसने नही दिया वह शराफत अली से सान करके किराया हजम कर लिया

In suit no.9 of 1995 the plaintiff states as under:

विवादित दुकान जनवरी 1988 की बनी है यह दुकान मैने बनवायी थी। इसका मकान मालिक मैं हूॅ। प्रतिवादी को मैने ही विवादित सम्पत्ति फरवरी 88 को 200/ रु0 महीने पर किराये पर दी थी। भूरा ने मुझे मार्च 90 तक किराया दस्ती दिया हुआ था। अप्रैल 90 से मई 95 तक का किराया 12400/रु0 प्रतिवादी की ओर बाजिव था यह किराया मैने प्रतिवादी से जुबानी व लिखित भी मॉगा लेकिन उसने मुझे किराया नही दिया व शराफत अली से साजा करके मुझे मकान मालिक मानने से इन्कार कर दिया।

The revisional court has rightly held that the Judge, Small Cause Courts has jurisdiction to decide the case on merits. Judge, Small Cause Court is fully competent to decide relevant facts with regard to the ownership of the plaintiff along with merits of the case itself. From the copy of the plaint it is evident that the tenants are not paying rent and even the landlord has stated that the rent has become time barred. He has made a mention regarding arrears of rent, which he is legally entitled to recover. Looking the position the tenants are defaulters, the plea taken by them is nothing but in order to delay the suit itself.

In Mangal Chand Naglia vs. District Judge, Deoria, and others 1983 AWC 52 it has been held as under:

'As the pleadings stand at present, I see no want of jurisdiction in the learned Judge, Small Cause Court to take cognisance of the suit. It is not correct to say that merely because the defendant chooses to question the fact that the plaintiff is not his landlord the Small Cause Court automatically loses jurisdiction to try the suit. What section 23 of the Provincial Small Cause Court Act says is that where the Court finds that the relief which the plaintiff is claiming depends for its success upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine,

the Court may at any stage of the proceedings, return the plaint to be presented to a Court having jurisdiction to determine the title. Section 23 in my view merely vests discretion in the Court and in cases where the Court comes to the conclusion that the question of title is such which cannot finally be determined by the Provincial Small Cause Court, in those cases it may direct the return of the plaint to be presented to the proper Court.

The position, therefore, is that as the pleadings of the parties stand at present it cannot be said that the case involves determination of any such complicated question of title which the Court cannot itself determine."

The aforesaid view has been followed in the case of *Smt. Munni Devi and others Vs X Addl. District Judge, Allahabad and others AIR 1990 All. 169,* to the following effect:

"In my opinion the Judge Small Cause had Jurisdiction to decide the question of title incidentally involved in the case. The effort on the part of the petitioner's counsel for getting the case remanded to the Judge Small Causes to frame an issue and decide would be only a futile exercise in the absence of any material on record."

In AIR 1988 SC 1772 Budhumal vs. Mahbir Prasad it has been held by the Apex Court as under:

> *"Section 23 of the Small Cause Court Act does not make it obligatory on the court of Small Causes to invariably return the plaint once a question to title is raised by the tenant in a suit for eviction. Also in a suit institute by the landlord against his tenant on the basis of contract of tenancy a question of title could also incidentally be gone into and any finding recorded by a Judge Small Causes in this behalf could not be res judicata in a suit based on title".*

In the case *Shamim Akhtar vs. Iqbal Ahmad & another 200(2) A.R.C. 770,* the Apex Court has interpreted the provisions of Provincial Small Causes Courts Act, and has held as under:

Section 23(1) provides that when the right of a plaintiff and the relief claimed by him in a Court of Small Cause depends upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceeding return the plaint to the presented to a Court having jurisdiction to determine the title. The power vested under sub section (1) in the Court is discretionary. It is to be exercised only when the relief claimed by the plaintiff in the proceeding before the Small Causes Court depends upon the proof or disproof of a title to the immovable property and they relief sought cannot be granted without determination of the question.……

The question of title of the plaintiff to the suit house could be considered by the Small Cause Court in the proceedings as an incidental question and final determination of the title could be left for decision of the competent Court. In such circumstances, it could not be said that for the purpose of granting the relief claimed by the plaintiff it was absolutely necessary for the Small Causes Court to determine finally the title to the property. The tenant respondent by merely denying the relationship of landlord and tenant between \himself and the plaintiff could not avoid the eviction proceeding under the Rent Control Act. That is neither the language nor the purpose of the provisions in Section 23 (1) of the Small Causes Court Act".

Section 23 of the Provincial Small Cause Courts Act, therefore has not ousted the jurisdiction of the Small Cause Court to decide the question of title.

In the case reported in 1983 All WC 52: (1983 All. L.J. 214) Mangal Chandrs vs. District Judge, it has been held:

"It is not correct to say that merely because the defendant chooses to question the fact that the plaintiff is not his landlord the Judge Small Causes automatically loses jurisdiction to try the suit. What section 23 of the Provincial Small Cause Court Act says is that where the court finds that the relief which the plaintiff is claiming depends for its success by proof or disproof of a title to immovable property or other title which such a court cannot finally determine, the Court may at any stage of the proceeding return the plaint to be presented to a Court having jurisdiction to determine the title. Section 23 merely vests a discretion in the court and in cases where the Court comes to the conclusion that the question of title is such which cannot finally be determined by the Provincial Small Cause Court, in those cases it may direct the return of plaint for presentation to proper Court ."

In Gopal Chand Singh Roy Vs District Judge Varanasi, A.R.C. 1996 (2) page 68 it has been held that the grant of relief of ejectment claimed by the plaintiff depends not on the question of title but on the question of existence of proof of the relationship of the landlord and tenant. Therefore, it was held to the following effect:

" Whenever a dispute is raised in regard to the title the court does not become bound to return the plaint. Mere denial of the title of the plaintiff landlord in relation to the disputed house by the defendant tenant-cannot oust the jurisdiction of the Judge Small Cause obliging him to direct the return of the plaint under section 23 of the Act."

The revisional court, therefore, has rightly allowed and remanded all the revisions for considering the question on merits. The Judge Small Cause Courts has decided the case only on the basis of

issue no.1 to 4. On the basis of issue no.1 to 4 the plaint was directed to be returned to the Civil Court and the same has rightly been set aside by the revisional court.

The revisional Court has rightly set aside the order and has remanded the matter to the Judge Small Cause Court. The revisional court has considered the case from the point of view of the fact that the relationship of landlord and tenant can be determined by the Judge Small Cause Courts. The revisional Court has held as under:

उपरोक्त विवेचन के आधार पर मेरा निष्कर्ष है कि निगरानीकर्ता द्वारा प्रस्तुत लधुवाद लधुवाद न्यायालय के द्वारा सुने जाने याग्य था तथा विचारण न्यायालय ने वाद को सक्षम न्यायालय में प्रस्तुत करने का आदेश देकर विधि एवं तथ्यगत त्रुटि है। अतः उक्त आदेश में हस्तक्षेप करने का युक्तियुक्त आधार है तथा निगरानी स्वीकार किये जाने योग्य है।

I find no merits in the orders passed by the revisional court in S.C.C. Revision No. 40/2000, 41/2000, 42/2000, 43/2000 and 44/2000. No interference can be made under Article 226/227 of the Constitution of India.

Since it is a suit of the year 1995 and it is Small Cause Court suit, it is therefore, directed that the suit is disposed of expeditiously on all the issues. The order for returning the plaints have already been quashed by the revisional Court, therefore, the Judge Small Cause Court is expected to decide the suits No. 4 of 1995, 5 of 1995, 6 of 1995, 7 of 1995 and 9 of 1995 on merit in accordance with law.

In the result the writ petitions are dismissed. No order as to costs. Let the Copy of this order shall be placed on the record of Writ petitions No.835/2003 (MS), 836/2003 (M/S), 837/2003(MS) and 786/2003(MS)

(Rajesh Tandon, J.)

22.09.2003
*Dhyani